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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2958 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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RAMNATH GUPTA

Versus

STATE OF GUJARAT  
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Appearance:

NOTICE SERVED for Petitioner  
MR S.T.Mehta instructed  
by Mr. SP HASURKAR for Respondent No. 1  
MR HS MUNSHAW for Respondent No. 2  
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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/12/1999

ORAL JUDGEMENT

#. The present petitioner who was at the relevant time  
serving on the post of Medical Officer, Class-II at the  
Government Hospital, Mandvi, Surat has challenged the

orders at Annexures H & I by which his services have been terminated from the aforesaid post of Medical Officer, Class-II, Government Hospital, Mandvi. Aforesaid order of termination was passed on 24.5.1988 and consequential order was passed by the DDo, Surat on 26.5.1988 by which the petitioner was asked to hand over his charge.

#. The case of the petitioner in this Special Civil Application is that he was appointed on purely temporary basis on Class-II post of Medical Officer. A Government Resolution to that effect was passed which is produced at Annexure.A to the petition. The petitioner was accordingly appointed on a Class-II post on purely temporary basis till a candidate selected by Gujarat Public Service Commission (GPSC for short) is made available. Initially the petitioner was appointed at the Mobile Dispensary at Uchchal, District Surat. However, by modification of the earlier order, he was posted under the Panchayat Dispensary, Mandvi, Surat. Said order dated 7.6.84 is produced at Annexure.C to the petition.

#. The petitioner has resumed his duties on the aforesaid post. Thereafter the petitioner appeared for interview before the GPSC for regular appointment as Medical Officer as his earlier appointment was purely on adhoc basis and it was specifically stated that said appointment is made till a candidate selected through GPSC is made available. After going through the aforesaid procedure of being selected through GPSC, the petitioner was appointed by the Resolution dated 29.8.86 which is at Annexure.D to the petition. It has been specifically provided in the said Resolution at Annexure.D that the selected candidate is required to resume his duties within a period of one month from the date of his appointment. Thereafter by a further order at Annexure.E, the petitioner was given appointment at the Government Hospital, Dharampur, District Valsad. According to the averments made by the petitioner in the petition, he had not received any order of appointment and therefore, he could not resume his duties at Dharampur. Thereafter, by an order dated 13.5.1987, which is at Annexure.F to the petition, the petitioner was given posting at the Civil Hospital, Valsad. However, the petitioner had not accepted the aforesaid posting on the ground that he had opted for Health side and as against that, he is compelled to join in the Medical side. It is the assertion of the petitioner in the petition that if he is to be posted from Health side to Medical side, then he has to resign and then only he can join the Medical side as his earlier service is not counted and it would be considered as his fresh

appointment. He had also opted to continue in the Health side by giving option in the past. The petitioner had also pointed out that earlier he was transferred by DDO, Surat by his order dated 31.3.87 transferring him from Mandvi to Karanjkhed of Taluka Vyara. According to the petitioner, when he has been regularly recruited through GPSC in the year 1987 the order of discharging him from service is arbitrary and discriminatory.

#. On behalf of DDO affidavit in reply has been filed which at page 27 of the compilation. It has been pointed out in the reply that the petitioner was initially appointed on 7.5.84 as Medical Officer at Uchchal. Subsequently that order was modified and by an order dated 7.6.84, he was appointed as Medical Officer, Mandvi, District Surat. It is stated that the aforesaid order of appointment of the petitioner was purely on adhoc basis and subject to the availability of a candidate selected through GPSC. It has been pointed out that the petitioner has not approached the respondent no.2 DDO, Surat under whom he was working at the relevant time requesting respondent no.2 to allow him to join his duties as per new posting order at the Government Hospital at Dharampur, District Valsad and he had continued to serve on the aforesaid post on which he was appointed on adhoc basis till he was discharged from service by the impugned order. Therefore, it is stated that the petitioner had not accepted the orders of his transfer and posting at Valsad district which was issued by the respondent no.1 or Director of Health and Medical Services. It is pointed out in the affidavit in reply that the petitioner therefore, had failed to resume his duties either at Government Hospital at Dharampur, district Valsad or at Valsad city itself. In that view of the matter, it is not open for the petitioner to assert his right for the post on which he was only temporarily appointed. It has been pointed out that as the petitioner did not resume his duties on the newly appointed post - the appointment given to him on the basis of his selection through GPSC, he had no right to continue on the post in question on adhoc basis indefinitely and therefore, he was discharged from duties from the said post. It has been stated in para 8 of the reply that the petitioner did not resign from the post which he was holding on adhoc basis and had not joined duties at Dharampur or Valsad and therefore, since he had no right to continue on the adhoc post, he was discharged from the services of the said post. It has also been pointed out that till the Health and Medical branches are not combined, the petitioner cannot claim any benefit on

the basis of exercising option. In para 10 of the reply it has been pointed out that the petitioner has not accepted his regular order by resuming his duties where he was posted and continued to serve on the post on which he was appointed purely on adhoc basis. It was therefore, stated that his services were rightly terminated. It has been submitted on behalf of the respondents that since the petitioner was appointed purely on adhoc basis on the post in question, he had no right to remain over the said post and he was under duty to join at a place where he was given substantive appointment on the basis of his selection through GPSC. Initially the petition was filed by the petitioner through his advocate Mr.B.J.Shethna who was subsequently appointed as Judge of this Court. Therefore, a notice was served by the office to the petitioner and as per the endorsement, the petitioner is served but he has not engaged any advocate nor has filed any appearance through himself or through any advocate. I have therefore, considered the averments made in the petition and the affidavit in reply filed by the respondent no.2.

#. Looking to the averments made in the petition as well as considering the affidavit in reply, it is clear that the petitioner was appointed on the post of Medical Officer-Class-II purely on a temporary basis and till a candidate selected by the GPSC is made available. However, it is true that thereafter he appeared before the GPSC for interview and was ultimately selected. However, as he did not resume his duties at a place where he was given regular appointment on the basis of his selection through GPSC, the petitioner cannot have any right on the post on which he was appointed purely on temporary basis. It was his duty to join at the place where he was substantively appointed by the State Government and he cannot have any lien or right on the post in question. It is argued by Mr. S.T.Mehta learned AGP that the petitioner was not willing to be transferred from Mandvi, District Surat and therefore, he had not resumed duties on the newly appointed post. However, whatever may be the reasons, one thing is certain that the petitioner has not resumed his duties on the post on which he was regularly appointed and his insistence to serve only under respondent no.2 was not justified. The petitioner had no right over the post in question on being appointed through GPSC he was required to resume his duties on the aforesaid regular post. In the circumstances, he cannot have any right over the post in question. It cannot be said that the impugned order at Annexure H by which his services were terminated, was in any way malafide or discriminatory. Aforesaid order is

not passed by way of penalty and therefore, it cannot be said that the order is penal in nature. Therefore, the averments made in the petition have absolutely no legal footing. I see no merit in the aforesaid Special Civil Application. The Special Civil Application, on the aforesaid grounds deserves to be dismissed and the same is accordingly dismissed. Rule is discharged with no order as to costs.